Laborers' International Union of North America, Local No. 500 *and* Helm & Associates, Inc. and United Association, Local 50 Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada. Case 8–CD–500

July 31, 2006

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act) involving the Laborers' International Union of North America, Local No. 500 (Laborers) and the United Association, Local 50 Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (UA Local 50).[1] For reasons discussed below, we award the work in dispute to employees represented by the Laborers.

On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties have stipulated that Helm and Associates, Inc. (the Employer) is an Ohio corporation engaged as a mechanical contractor in the construction industry, and that it annually purchases and receives goods valued in excess of $50,000 directly from points located outside of Ohio. The parties have further stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Finally, the parties have stipulated, and we find, that the Laborers and UA Local 50 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

The Employer is bound by collective-bargaining agreements with both the Laborers and UA Local 50. It has an agreement with UA Local 50 through its membership in the Mechanical Contractors Association of Northwestern Ohio (MCA). It is also a signatory to the Ohio Highway-Heavy Municipal-Utility State Construction Agreement (HHA), which is a multiemployer agreement with the Laborers. Both agreements were in effect at the time of the events described below.[2]

In the fall of 2005, the Employer received a contract to install the water filtration/treatment system at the City of Toledo Detwiler swimming pool project. The Employer assigned all of the work in connection with the project to employees represented by the Laborers.

On December 5, 2005, UA Local 50 filed a grievance alleging that the Employer had violated the MCA agreement by assigning the installation of the piping on the filtration system to the Laborers. A hearing on the grievance was held before the MCA's Labor Management Committee (LMC) on January 23, 2006.[3] The Employer challenged the authority of the LMC to resolve the issue and refused to take part in the hearing.[4] The LMC subsequently found that the Employer violated the MCA agreement and assessed damages against the Employer.

Prior to the LMC hearing, the Laborers sent a letter to the Employer stating that it was aware of the grievance and that it claimed the work based on past practice and the HHA. After the LMC issued its decision, the Employer informed the Laborers that it was going to assign any remaining pipe installation work on the project to UA Local 50 unless the Laborers could persuade UA Local 50 to disclaim the work. The Employer received a letter from the Laborers on March 11, threatening a strike if it awarded the pipe installation work to UA Local 50. The Employer then filed a charge with the Board on March 14.

B. Work in Dispute

The parties have stipulated that the work in dispute is all work in connection with the installation of the water filtration/treatment system at the City of Toledo Detwiler pool project. The record indicates that this work includes the following: installation of piping inside of the filtration plant; installation of piping from the plant to the filter; removal of the existing system; removal and replacement of concrete; setting and rigging equipment; construction of a concrete pad for the filter and setting the filter on the pad; core drilling and patching of walls;

[1] The charge in this proceeding was filed by Helm and Associates, Inc. on March 14, 2006, alleging that the Laborers violated Sec. 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the company to assign certain work to employees represented by the Laborers rather than to employees represented by UA Local 50.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error.

[2] The term of the MCA agreement is July 1, 2005 through June 29, 2008. The term of the HHA agreement is May 1, 2004 through April 30, 2007. The Employer became a signatory to the HHA on January 17, 2005.

[3] All dates hereafter are in 2006 unless otherwise noted.

[4] The Employer asserted that the Board has exclusive authority to settle the dispute pursuant to Sec. 10(k).

reworking of steel ladders, rails, and platform; removal and replacement of doors; erection of fencing; and landscaping.

C. Contentions of the Parties

The Employer and the Laborers contend that the disputed work should be assigned to employees represented by the Laborers based on employer preference and past practice, and economy and efficiency of operations. Additionally, the Laborers contend that the work should be assigned to employees it represents based on area and industry practice, relative skills, and the HHA. Both the Employer and the Laborers request that the Board issue a broad award covering all future assignment of the work in dispute to employees represented by the Laborers.

UA Local 50 contends that the work should be assigned to those employees that it represents based on the MCA, area and industry practice, and relative skills.

D. Applicability of the Statute

The Board may proceed with a determination of a dispute under Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. This standard requires finding that there is reasonable cause to believe that (1) there are competing claims to the disputed work; and (2) that a party has used proscribed means to enforce its claim to the work in dispute. Additionally, there must be a finding that the parties have not agreed on a method for the voluntary adjustment of the dispute. See, e.g., *Operating Engineers Local 150 (R & D Thiel)*, 345 NLRB No. 94, slip op. at 3 (2005). We find that all three of these criteria are satisfied.

1. Competing claims for work

The parties have stipulated, and we find no evidence to the contrary, that the Laborers and UA Local 50 both claim the work in dispute.

2. Use of proscribed means

The parties have also stipulated, and the evidence shows, that the Employer received a letter from the Laborers on March 11 threatening a strike if the work is assigned to UA Local 50. There is therefore reasonable cause to believe that the Laborers used proscribed means to enforce its claim to the work in dispute.

3. No voluntary method for adjustment of dispute

Finally, the parties have stipulated that there is no agreed-on method for the voluntary adjustment of this dispute that would bind all parties. The record shows that although UA Local 50 has attempted to resolve the dispute through its contractual grievance process, the process is not binding on the Laborers.

We therefore find this dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreements

The parties have stipulated, and there is no evidence to the contrary, that the Employer has voluntarily recognized both unions and that there are no Board orders or certifications determining the collective-bargaining representative of the employees performing the work in dispute.

Both unions have asserted a claim to the work based on their respective collective-bargaining agreements with the Employer. The Laborers base their claim primarily on article II, section 11(g) of the HHA, which defines the following work as being within the scope of the agreement:

> Sewage Plant, Waste Plant, Water Treatment Facilities Construction, Pumping Stations (except packaged plants) shall be all work in construction of pumping stations . . . water treatment plants, filtration plants and solid waste disposal plants.
>
> All work involved in laying and installation of process piping outside of a building, structure, or other work, regardless of the material used or substance conveyed.
>
> All work involved in laying and installation of process piping both outside and within . . . water treatment plants, including, but not limited to, mechanical and pressurized pipe within.

UA Local 50 bases its claim on language contained in schedule A of its agreement with the MCA, which provides that the following work "shall be done exclusively" by members of UA Local 50:

> All cold, hot and circulating water lines, piping for house pumps . . . swimming pools . . . and the handling and setting of the equipment mentioned above.

Based on the language in the respective collective-bargaining agreements, employees represented by both

unions have arguable claims to the disputed work. Thus, we find that this factor does not weigh in favor of either group of employees.

2. Employer preference and past practice

Employer's witness Keith Helminski, who is president and CEO of the company, testified that the Employer prefers to assign the work in dispute to employees represented by the Laborers.

With regard to the Employer's past practice, the record shows that the Employer has assigned installation of piping to employees represented by the Laborers on four projects since August 2004: (1) the Ottawa County water treatment and pump station; (2) a water main project in Weston, Ohio; (3) a water treatment plant in Defiance, Ohio; and (4) a high-volume pump station in Edgewater.[5] Although the Employer has never done work on a swimming pool before the Detwiler project, Helminski testified that the work performed by members of the Laborers on the swimming pool project was analogous to that performed on the above-mentioned water treatment and pump projects.

Tom Joseph, business manager for UA Local 50, testified that the swimming pool project is not analogous to the earlier projects assigned to the Laborers because the pool's filtration system was prepackaged, and the system is self-contained on the property. However, Joseph admitted that there are similarities between a water treatment plant's filtration system and a swimming pool's filtration system.

Helminski testified generally that the Employer has assigned pipe installation in the past to employees represented by UA Local 50 on private-sector projects. There is no specific information in the record concerning these assignments.

We conclude from this evidence that the Employer has a past practice of assigning pipe installation work to employees represented by both unions. Given the Employer's preference, however, we find that this factor favors assigning the work to employees represented by the Laborers.

3. Area and industry practice

Based on the evidence presented by the parties, there does not appear to be a uniform area or industry practice regarding the assignment of the type of work in dispute. Helminski testified that local practice is to assign pipe installation work on municipal construction projects to employees represented by the Laborers, and to assign pipe installation work on private construction projects to employees represented by UA Local 50. Witnesses for the Laborers testified that members of their union have performed pipe installation work for other area contractors for the last 40 years. Business Agent Yancy Shaw testified that members of the Laborers performed work on a swimming pool project at Ohio State University, including the installation of piping that went through the pump house.[6]

UA Local 50 Business Manager Joseph testified that pipe installation work in the area is a "mixed bag." UA Local 50 offered into evidence an e-mail from an MCA member that listed a number of swimming pool projects on which it employed members of UA Local 50.[7] UA Local 50 also proffered miscellaneous documents indicating that members of the Plumbers and Pipefitters have performed swimming pool work in other areas of the country.[8]

We find that the above evidence is insufficient to establish a clear area or industry practice with regard to the disputed work. Accordingly, this factor favors neither employees represented by the Laborers nor those represented by UA Local 50.

4. Relative skills

The record demonstrates that employees represented by both UA Local 50 and the Laborers possess the necessary skills to perform the installation of the water filtration system.

According to testimony by Joseph, UA Local 50 members initially participate in a mandatory 5-year training program encompassing all facets of plumbing and pipefitting. The program includes 265 hours of training each year and a minimum of 1800 hours in the field.

Helminski testified that Laborers' members have the skills needed to perform the work, and that he has not had any complaints concerning the Laborers' members' performance with regard to the installation of pipes on past projects. Tom Leonard, a business agent for the Laborers, testified that two of the union's members who are employed on the Detwiler job have received relevant training. Additionally, Ed Sidle, who is a member of the Laborers, testified that he has performed pipe installation work for the Employer on several projects, including the Detwiler project.

[5] On projects that were done before the Employer signed the HHA (January 2005), the Employer assigned the work to employees represented by the Laborers pursuant to project-specific agreements.

[6] There is no evidence as to when this project was begun or completed.

[7] The e-mail presents no specifics concerning the type of work performed on the projects.

[8] UA Local 50 attached to its brief to the Board several documents not introduced at the hearing. The Laborers subsequently filed a motion to strike the documents because they were not presented as evidence during the hearing. On May 22, 2006, the Board granted the Laborers' motion.

Because both groups of employees have the skills necessary to perform the work in dispute, we find that this factor does not favor assigning the work to employees represented by either union.

5. Economy and efficiency of operations

As stated above, the work in dispute includes not only pipe installation but also, inter alia, the removal and replacement of concrete, the construction of a concrete pad for the filter, drilling of walls, reworking of ladders and rails, replacement of doors, erection of fencing, and landscaping. The Employer and the Laborers argue that assigning the disputed work to employees represented by the Laborers is more efficient because those employees will perform all of these tasks, thus making it unnecessary for the Employer to hire additional employees.[9]

UA Local 50 does not contend that its members would perform any of the above-mentioned tasks (other than pipe installation), and does not deny that the employees represented by the Laborers are more versatile.

Based on the record before us, we find that this factor weighs in favor of assigning the work to employees represented by the Laborers.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Laborers are entitled to perform the work in dispute. We reach this conclusion relying on employer preference and economy and efficiency of operations. In making this determination, we are awarding the disputed work to employees represented by the Laborers, not to that labor organization or its members.

F. Scope of the Award

The Employer and the Laborers request a broad award covering all future assignment of the work in dispute within the geographic region of the HHA. We deny this request.

The Board customarily declines to grant a broad, area-wide award in cases where the charged party represents the employees to whom the work is awarded and to whom the employer contemplates continuing to assign the work. See, e.g., *Southwest Regional Council of Carpenters (Standard Drywall, Inc.)*, 346 NLRB No. 48, slip op. at 6 (2006); *Pipefitters Local 562 (Systemaire, Inc.)*, 321 NLRB 428, 431 (1996). Here, the Employer contemplates continuing to assign the work to employees represented by the Laborers, the charged party. Accordingly, the conduct of the Laborers does not warrant a broad award.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute:

Employees of Helm & Associates, Inc., represented by the Laborers' International Union of North America, Local No. 500 are entitled to perform the work in dispute:

> All work in connection with the installation of the water filtration/treatment system at the City of Toledo Detwiler pool project, including the installation of piping inside of the filtration plant; installation of piping from the plant to the filter; removal of the existing system; removal and replacement of concrete; setting and rigging equipment; construction of a concrete pad for the filter and setting the filter on the pad; core drilling and patching of walls; reworking of steel ladders, rails, and platform; removal and replacement of doors; erection of fencing; and landscaping.

Dated, Washington, D.C. July 31, 2006

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

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[9] The Employer also argues that it is more economical to hire employees represented by the Laborers because their hourly wage and benefit rates are lower than comparable rates for employees represented by UA Local 50. The Board does not consider such evidence to be relevant in making an award. See *Bakery Workers Local 205 (Metz Baking Co.)*, 339 NLRB 1095, 1098 (2003); *Painters Local 91 (Frank M. Burson, Inc.)*, 265 NLRB 1685, 1687 (1982).